

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-129998-06

Date:

March 07, 2007

Legend

X =

D1 =

D2 =

D3 =

D4 =

State =

Dear :

This responds to a letter dated June 5, 2006, submitted on behalf of X, requesting relief under § 1362(b)(5) of the Internal Revenue Code. X also requested that Form 1128 be considered as timely filed pursuant to the authority contained in § 301.9100-3 of the Procedure and Administration regulations.

FACTS

According to the information submitted, X was incorporated on D1 under the laws of State. X intended to be treated as an S corporation for Federal tax purposes effective D2, but the election was not timely filed. In addition, X intended to file a Form 1128 to change its taxable year to a D3 year, effective D4, but the form was not timely filed.

LAW AND ANALYSIS

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides the rule on when an S election will be effective. If an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. If the election is made after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if no election is made pursuant to § 1362(a), or, if made, the election is made after the date prescribed for making such an election, and the Secretary determines there was reasonable cause for the failure to timely make the election, then the Secretary may treat such election as timely made for such taxable year and effective as of the first day of that year.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 (automatic extensions), such as the instant case, must be made under the rules of § 301.9100-3. Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government.

CONCLUSION

X did not file a timely election to be treated as an S corporation under § 1362(a) effective D2. X has, however, established reasonable cause for not making a timely election and is entitled to relief under § 1362(b)(5). Based solely upon the facts submitted and representations made, and provided that X otherwise qualifies as a subchapter S corporation, we conclude that X will be recognized as an S corporation effective D2. Within 60 days from the date of this letter, X should submit a properly completed Form 2553, with a copy of this letter attached, to the relevant service center.

X did not file a timely Form 1128. However, based on the facts and information submitted and the representations made, we further conclude that X has acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government. Accordingly, X has satisfied the requirements of the regulations for the granting of relief, and X's late filed Form 1128 requesting to change to D3, effective D4, is considered timely filed. X's requested change in accounting period is controlled by Rev. Proc. 2002-37 and, therefore, is under the jurisdiction of the Director, Internal Revenue Service Center, where the taxpayer's returns are filed. X should file a Form 1128 with the Director of the relevant service center within 45 days of

the date of this letter. X should submit a copy of this letter with the Form 1128. Any further communication regarding this matter should be directed to the Service Center.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Dianna K. Miosi
Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for section 6110 purposes